

CHILI ZONING BOARD OF APPEALS

August 25, 2003

A meeting of the Chili Zoning Board of Appeals was held on August 25, 2003 at the Chili Town Hall, 3333 Chili Avenue, Rochester, New York 14624 at 7:00 p.m. The meeting was called to order by Chairperson Beverly Griebel.

PRESENT: Dan Melville, Gerry Hendrickson, Richard Perry, Michael Martin, Peter Widener, Dennis Schulmerich and Chairperson Beverly Griebel.

ALSO PRESENT: Daniel Kress, Director of Planning, Zoning & Development;
Keith O'Toole, Assistant Counsel for the Town.

Chairperson Beverly Griebel declared this to be a legally constituted meeting of the Chili Zoning Board of Appeals. She explained the meeting's procedures and introduced the Board and front table. She announced the fire safety exits. The Pledge of Allegiance was cited.

Beverly Griebel announced the Conservation Board usually meets in this meeting room on Monday nights. She stated they are meeting across the hall this evening in case anyone was present in this room for that meeting.

BEVERLY GRIEBEL: Before we begin, I was out on Sunday the 17th in the afternoon, and Application Number 3 had only one sign and it didn't have one on the side lot there, on that corner with the two streets. Anyone see the signs there?

DAN MELVILLE: I just saw one.

BEVERLY GRIEBEL: Counsel, is that a problem?

KEITH O'TOOLE: I'm sorry?

BEVERLY GRIEBEL: On Number 3, on Robert Hay, it is a corner lot and there was only one sign posted. The sign was on the main street.

KEITH O'TOOLE: That seems sufficient.

BEVERLY GRIEBEL: Okay. Thank you.

Number 4, I was out on that Sunday, I was out yesterday, and --

DAN MELVILLE: I was out every day of the week. No sign has been posted.

GERRY HENDRICKSON: No sign.

DENNIS SCHULMERICH: I stopped and talked to the manager of the store and they had no idea where it was. They knew it got picked up, but...

BEVERLY GRIEBEL: Nobody posted it.

DENNIS SCHULMERICH: No.

BEVERLY GRIEBEL: Can't hear it this evening.

Is the applicant here for that application?

MR. MARRIN: We were informed by the Store Manager -- my name is Douglas Marrin (phonetic), an agent for CVS Pharmacy Corporation. We were informed the management posted the sign, but when we drove by today, we noticed it was not posted in a conspicuous way. So the property was not posted to notice requirements.

BEVERLY GRIEBEL: It was not. We all went out at different times and it was not posted.

DAN MELVILLE: I go by it every day.

MR. MARRIN: We went by today and saw it was not posted properly.

BEVERLY GRIEBEL: We'll have to table that until the September 23rd meeting.

MR. MARRIN: Certainly.

Dennis Schulmerich moved to motion the table and Michael Martin seconded the motion.

BEVERLY GRIEBEL: If anyone is here for that application, we'll not hear anything on that this evening, Number 4, CVS.

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The applicant will get a notice saying they have to post a new sign and they have to appear for the public hearing at that time.

I did not have any problems with any other signs.

DENNIS SCHULMERICH: Not for tonight.

BEVERLY GRIEBEL: Tomorrow? Tomorrow is a different story. Okay.

1. Application of Richard Mercendetti, owner; 809 Westside Drive, Rochester, New York 14624 for variance to allow the total square footage of garage area, including a new 25' x 35' detached garage, to be 1,675 sq. ft. (900 sq. ft. allowed), variance to allow roof line of garage to be higher than roof line of dwelling at property located at 809 Westside Drive in R-1-20 zone.

Richard Mercendetti was present to represent the application.

MR. MERCENDETTI: Hi.

BEVERLY GRIEBEL: Hi. What do you plan to use the garage for?

MR. MERCENDETTI: I plan to use the garage for storage, recreational vehicles and my yard equipment. My plan is to refinish my basement and I'm going to need space to put things.

BEVERLY GRIEBEL: You have a garage that is already attached to the house?

MR. MERCENDETTI: That is correct. I have two full-sized vehicles in the garage. I want to have room to put the lawn mower and I have a motorcycle that cramps the space up quite a bit. So I really don't have the room I need and I would really appreciate it if I could do this.

BEVERLY GRIEBEL: How high is the roof line going to be?

MR. MERCENDETTI: It will be higher than the house because the house is on a hill. The land goes up. It is an upgraded hill. So naturally no matter what I do, the garage is going to be higher than the house. Because I have quite an incline there.

DENNIS SCHULMERICH: It is also a ranch home?

MR. MERCENDETTI: Yes.

BEVERLY GRIEBEL: It is low?

MR. MERCENDETTI: It is low in the front and high in the back.

BEVERLY GRIEBEL: How high will it be?

MR. MERCENDETTI: Well, I --

DAN MELVILLE: How high from the ground?

MR. MERCENDETTI: I don't believe it will be more than 20 feet. To the tip of the roof. I don't plan on putting a flat roof.

DAN MELVILLE: You have a ranch house?

MR. MERCENDETTI: A ranch house, yes.

DAN MELVILLE: So you're probably 16 feet.

MR. MERCENDETTI: Yes. The house itself is probably close to 16, 17 feet, I would imagine. At least.

BEVERLY GRIEBEL: Now, the reason why it has to have a high pitch, why is that?

MR. MERCENDETTI: Because I have this huge hill in my backyard that comes down and then my house sits on a flat level and goes down again.

BEVERLY GRIEBEL: But when you measure from the ground level of the house to the highest point of the roof, compare that to the ground level of the garage to the highest point of the garage, what would be the difference in height?

MR. MERCENDETTI: Probably 4 feet, 3 or 4 feet. The height of my house compared to the height of the new garage that I want to put up? I am saying it is going to be 4 feet higher, 3 or 4 feet higher. Not counting -- now it may appear to be higher than that because of the hill itself. Once I put the foundation in to put the garage, she may appear to be a little higher than that, because of the land, the way the land comes downhill.

BEVERLY GRIEBEL: Could you make it a lower pitched roof on the garage so it wouldn't be so high?

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DAN MELVILLE: Do you know what the pitch is on the garage? Is someone building this for you?

MR. MERCENDETTI: Yes.

DAN MELVILLE: Do you know what the pitch is?

MR. MERCENDETTI: No. I haven't looked into that at all actually. I'm more concerned on whether I am able to do it or not.

RICHARD PERRY: Were you planning on using a second floor in this --

MR. MERCENDETTI: I would like to be able to have a loft in the garage, yes, so I can walk up the stairway and put some stuff in there. To use the roof area, yes. I plan on using that. I know that even after I build the garage, I probably still won't have enough space. You know how that goes. It is just never enough. Not that I collect a lot of things, but I do have a lot of stuff. I do all my own work in the house. I repair all my own stuff. I do have a lot of tools and stuff. So I use a lot of space. And I have a lot of vehicles. I have a couple -- I have a car, a truck, a bike. I have lawn mowers. I have 2 -- I have a 22-inch lawn mower to cut the grass. That thing is wide as can be and takes up so much space so it doesn't leave me a lot of room to maneuver the cars in and out of the garage. So I'm kind of stuck for space.

BEVERLY GRIEBEL: What kind of truck do you have?

MR. MERCENDETTI: A Bronco and a white step van that I use.

DAN MELVILLE: You are putting a concrete floor?

MR. MERCENDETTI: Yes.

RICHARD PERRY: What do you use the step van for?

MR. MERCENDETTI: For my work.

RICHARD PERRY: And your work is, sir?

MR. MERCENDETTI: I install in-ground irrigation systems, sprinkler systems.

RICHARD PERRY: Is that kept in the garage?

MR. MERCENDETTI: No. In the driveway.

RICHARD PERRY: Is that marked?

MR. MERCENDETTI: No. It doesn't have any signs on it.

RICHARD PERRY: A step van, like a Gruman?

MR. MERCENDETTI: It is like a small U-Haul miniature moving van. Not a big one. A smaller one.

RICHARD PERRY: It is not a step van -- or a red van?

MR. MERCENDETTI: No. It is more of a moving van than a red van.

BEVERLY GRIEBEL: Is this your own business?

MR. MERCENDETTI: Yes. The irrigation business, yes.

BEVERLY GRIEBEL: Where is your place of business?

MR. MERCENDETTI: 681 North Plymouth Avenue. Lyell and North Plymouth Avenue.

BEVERLY GRIEBEL: Can you keep that vehicle there?

MR. MERCENDETTI: No. Dangerous part of town to leave equipment. That's a truck I use that I go to work with and I come home with. That is just my truck that I use. I don't use my personal vehicles to go to work. I have other vehicles over on Plymouth Avenue.

BEVERLY GRIEBEL: So this is your business then?

MR. MERCENDETTI: Yes.

PETER WIDENER: Will you be running this business off this property at all?

MR. MERCENDETTI: No.

PETER WIDENER: Or storing equipment there?

MR. MERCENDETTI: No. Once in a while, if I am working on this side of town, a residential side of town, I have a small tractor, a vibrator plow that puts pipe in the ground and a trailer for that. Rather than drive into the city at 5 o'clock with the machine, if I know I will be on this side of town, I will leave it in my driveway hooked up to my truck and just take off with it in the morning rather than going through the traffic now.

PETER WIDENER: What is the building that is there now?

MR. MERCENDETTI: Building?

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PETER WIDENER: There is no building behind that property, where the garage is?

BEVERLY GRIEBEL: It is an attached garage?

MR. MERCENDETTI: I have an attached garage with my house, yes.

BEVERLY GRIEBEL: There is a proposed garage on the back.

PETER WIDENER: I thought I saw a building and a truck out there when I inspected the property.

MR. MERCENDETTI: I don't have any other buildings other than my home.

PETER WIDENER: That answers the question on the building. I don't know why I made a note that I saw one there.

You're asking for an area variance?

MR. MERCENDETTI: Yes, sir.

RICHARD PERRY: What is the biggest vehicle that will be in this pole barn?

MR. MERCENDETTI: Well, I have plans on buying a small camper-type vehicle in a year or two, so I would probably leave my camper in there to leave it out of the elements rather than having it in the driveway when winter comes and you're trying to plow snow and stuff. I don't want to pile snow up against that. I would rather have it put away somewhere. I don't own that vehicle, but my plan is to buy one. It would be a small one, not one of the big bus campers. It would just be a small one for myself.

DENNIS SCHULMERICH: I spent a fair amount of time over there on Saturday and they have a fairly large garage on the adjacent property. So based on the elevation of the property and the hill, it is not obvious to me that the building will be a whole lot different than what already exists on the adjacent property. I have a pretty good understanding what he is trying to do.

BEVERLY GRIEBEL: On the adjacent property, do they have a height problem?

DENNIS SCHULMERICH: The property has a significant elevation change, 15 to 20 foot from the top of the property to the road and side to side there seems to be an elevation change, as well.

BEVERLY GRIEBEL: The next-door house, is that a two-story house or one-story?

DENNIS SCHULMERICH: Two-story house and two-story garage.

BEVERLY GRIEBEL: So they're more similar in actual height, measured height?

DENNIS SCHULMERICH: Yes. But the garage on the adjacent property compared to his ranch, it is significantly higher than the ranch. So with the character of the immediate area, what he is asking to do doesn't seem to be a whole lot different than the garage his neighbor already has adjacent to his house. I'm not sure there is a whole lot he could do with the elevation change from the back to the front. You know, even with a one-story garage you would have the issue with the garage being higher. It is a fairly significant drop from the back to the front. I'm not fond of the variances that require the garage to be higher than the house, but this is a particular case where I'm not sure you have a whole lot of choice if you're going to put a building in at all.

BEVERLY GRIEBEL: It is almost as bad as a corner lot problem. You're stuck with a house. What do you do?

PETER WIDENER: What utilities do you plan to put into the garage?

MR. MERCENDETTI: At this time I wasn't planning on putting anything, but I imagine down the line, maybe next -- financially I'm not ready for all that. I'm just hoping to get it up so I can protect it from the weather, but I want to run some electric to it. So I will probably bring power to out to the garage. Maybe next summer.

PETER WIDENER: Do you want to heat this garage?

MR. MERCENDETTI: No, not at all.

PETER WIDENER: I thought you said you want to heat it?

BEVERLY GRIEBEL: Can you make this garage any lower, because you want to put almost a second story on it?

MR. MERCENDETTI: I could discuss it with the builder to get the roof pitched differently.

DAN MELVILLE: I don't know how much lower you can make that pitch with that size of the property -- with that size of a building.

MR. MERCENDETTI: The garage itself, though, is basically behind the house, so I feel that really you will have a hard time -- because the road is so much lower than the home itself, and then the garage is further back, it is a really long piece of property. I don't know that you will even see it from the road.

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BEVERLY GRIEBEL: It will be 60 feet back from the house.

MR. MERCENDETTI: That's correct.

BEVERLY GRIEBEL: Will you extend the driveway back there?

MR. MERCENDETTI: I would love to do a lot of things, but yes. Eventually at some point I would probably put some type of a driveway to it.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I would just like to make some comments. Based upon the fact that the house next-door is two stories and there probably may be a two-story garage, that seems appropriate. You have a ranch style house and you do indicate that you have a higher elevation to the back. My comment, and based upon keeping the area similar, the housing similar, that the roof of the house in elevation from floor to peak roof should be no higher than the peak of the house. That is not saying that the peak of the garage wouldn't be a higher elevation due to the land elevation difference. But that is the intention of the zoning laws specifically.

BEVERLY GRIEBEL: I think one problem that you have is -- I don't know what kind of roof you call that, where all four sides slant upward to a ridge on the top. Hip roof? So it is a very low slope on that. If it were a more normal slope that you would have on regular houses, you might not have the same problem, but this one is a very low profile roof.

MR. MERCENDETTI: I could even make the roof flat and pitched downward if I had to.

DAN MELVILLE: What is the width on the garage, do you know?

MR. MERCENDETTI: 35 feet, I think. If I am guessing right.

BEVERLY GRIEBEL: 25 by 35.

MR. MERCENDETTI: 25 by 35.

I have seen the roofs where they were flat and pitched down away from the building, so that would probably work if I had to do that.

BEVERLY GRIEBEL: Flat roofs --

MR. MERCENDETTI: I don't think it would look nice.

BEVERLY GRIEBEL: Flat roofs aren't good with the snow.

DAN MELVILLE: That is why you want a good pitch on it, too.

MR. MERCENDETTI: The one next-door to me is pitched like a house and that is how I would like to make it look, to make it look more appealing rather than making it look like a shed or a barn.

DENNIS SCHULMERICH: As long as you're talking two stories, the only thing you gain over a flat or hip or gabled is 3 or 4 feet. Again, if you stand at the top of the property and you stand at the road, that is a far more significant issue than the height of the house or the garage.

Charles (Rettig), just to understand your point, you're suggesting that the height of the garage should be no more than the height of the garage.

MR. RETTIG: If the height of the garage and the height of the house are the same, the elevation of the land is the only difference. That is what I am saying.

DENNIS SCHULMERICH: I just want to make sure I understood what you're saying.

BEVERLY GRIEBEL: Yes, but the problem with that is we're talking about two different types of roofs.

MR. RETTIG: We're also talking about one other thing, and that is the additional square footage here which also increases his span and his need for a higher peak, so you're talking about a variance here that is affecting your zoning law in more ways than one.

BEVERLY GRIEBEL: It affects a lot of things.

This went to Monroe County Planning, and Dan (Kress), on the side table, they cut off the determination?

DANIEL KRESS: It was referred as a local matter.

BEVERLY GRIEBEL: Thank you.

HAROLD McMANN, 14 Fenton Road

MR. McMANN: What he is talking about putting up, and if he is planning to put the sloped roof

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on that thing, he has to also maintain which way the water will flow off. On his house right now he has a hip roof which is four-sided like you were trying to explain. If he is going with a gabled roof, which way is he running the gables? Is he running them front to back, into the other people's land or will he run them whatever? If he is going left to right as you're looking at the property, that would be the ideal way because the plan wouldn't be as great as the difference front and backwards. That way also we'll get some of his runoff. I talked with him. Is he going to do some grading there because he has a very bad pitch of land going to his driveway and everything else. As long as he is not running a business out of it and he will maintain that the water flow will not change, I have no objections. But if you advise him that he has to change the roof to a flat roof or something to that, then we'll have a problem with the flow of drainage.

BEVERLY GRIEBEL: That could be a problem all of the way around. Thank you.

PAT BIETRY, 807 Westside Drive

MR. BIETRY: I am the one living next-door and obviously you all saw my garage and thought it was quite impressive. I want to thank you for that. It has been there since 1930, way before I joined this town.

I have no objections to what my neighbor is going to do as long as it is going to be facing in the right direction, and I have discussed this with him, and he promises me it is going to be facing -- let me see, north to south and not east to west. And yes, I do understand his problem because my land is higher than his. So he does have a heck of a predicament on his hands. But I also wanted to assure the Board and want it on the record my garage is not a typical two-story garage. It does have a very small loft, but it has no windows, no ventilation area whatsoever up there. And it has very little storage. Yes, it is a typical four-car garage length wise, but that is what they were allowed to build back in the '30s and they had Model T's. That was there when I moved there 26 years ago. I also have no problems with my neighbor doing what he plans to do.

ERNEST BUCKLE, 843 Westside Drive

MR. BUCKLE: I would like to get an assurance it is not going to be headquarters for a business. With all that space available, you could put all kinds of trucks in there.

DAN MELVILLE: He has already stated that for the record.

BEVERLY GRIEBEL: It has been his testimony it will not. There will be an occasional vehicle in and out, but it is not going --

DAN MELVILLE: He already has another location for the business.

MR. BUCKLE: Let's hope he stays with the other location then. Where is your telephone going to be?

DAN MELVILLE: It would require him coming back here again.

MR. BUCKLE: Okay.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Beverly Griebel made a motion to approve the application with the following conditions, and Michael Martin seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Garage is not to be used for commercial purposes.
2. Appropriate gutters and/or other measures to prevent/alleviate any drainage problem for neighboring properties.
3. Roof line of new garage not to exceed 20'.

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The following findings of fact were cited:

1. Maintains the character of the neighborhood.
 2. Applicant described need for additional storage.
 3. Existing house roof is a very low hip roof.
 4. Won't likely be visible from Westside Drive.
2. Application of Barbara Girvin, owner; 526 Paul Road, Rochester, New York 14624 for renewal of conditional use permit to allow a beauty shop in home at property located at 526 Paul Road in R-1-15 zone.

Barbara Girvin was present to represent the application.

MS. GIRVIN: Hi.

BEVERLY GRIEBEL: Hello.

MS. GIRVIN: I'm Barbara Girvin, and I have seen the Town around a lot this week. I have been there for 35 years and I am applying for another five years, but I attached a letter asking for a permanent variance. I live across the street from the Carriage House, and they are on a permanent variance, I understand.

I have had no complaints in 35 years. However, when the Town did come around, I would really appreciate it if they would have come to see the type of business that I am running so that you could see I am trustworthy to have a permanent variance. I saw a car parked across the street Saturday, I believe it was you (indicating), and you (indicating), checking things out, and I really would have appreciated it if you would have come in to see.

BEVERLY GRIEBEL: Well, we don't normally enter the homes. We don't usually do that.

DAN MELVILLE: This is probably different than the Carriage House across the street. They're on a variance. This is a conditional use.

BEVERLY GRIEBEL: This is a whole different sort of thing. This Board cannot approve something on a permanent basis. Conditional use is only for a maximum of five years. So if we approve this, we have to see you back here in five years. I can't believe it has been that long.

MS. GIRVIN: It will be 40 years in September that I have been a hairdresser. I'm very proud of what I have.

BEVERLY GRIEBEL: Nothing has changed? You're the only one?

MS. GIRVIN: The only one there. The only one working.

BEVERLY GRIEBEL: The last time -- we granted it for five years. There is no on-premises advertising. No on-street parking pertaining to the business. Customers by appointment. No more than three customers at a time. No outside employees. Hours of operation as per the application. And the applicant to maintain required State and local licenses. Those are the normal conditions on this type of operation.

GERRY HENDRICKSON: No questions. I know what she has been doing and how everything is going.

DENNIS SCHULMERICH: No questions. Just a comment. We had 25 properties to look at on Saturday. It took quite a few hours to do. Typically we'll talk to the owner or resident when we have specific questions. Your documentation was thorough and complete. The property looked good. It looked like you were busy with customers so that is why we moved on. Most people don't appreciate people from the government stopping by.

MS. GIRVIN: I have remodeled after 35 years and only one Town official has seen it, but he was there on other matter, so...

PETER WIDENER: I read your letter over and your concern about your applying for another permit. The permit you're applying for is only for another five-year conditional. Although in the letter you're asking that we make this a permanent situation, and I think as Bev (Griebel) mentioned, that has

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to be another application.

BEVERLY GRIEBEL: Conditional use, we don't make it permanent. So it's --

PETER WIDENER: But she asked for a variance of some type, I think. It sounds like the letter you have written, you're asking for it, but you just want us --

MS. GIRVIN: I'm asking -- what I was told when I came in to apply, to get my paperwork, that I had to attach a letter in addition to requesting the five years that I -- that I put down that I wanted the five-year permit. If I wanted more than that, I had to attach a letter to the application, so I asked -- I said I would like to apply for a permanent permit.

DENNIS SCHULMERICH: It is really a use variance she is talking about.

BEVERLY GRIEBEL: But that would be a whole different thing.

PETER WIDENER: This is not a use variance permit.

BEVERLY GRIEBEL: What she has there is a customary home occupation with a conditional use, and that's always granted on a temporary basis.

MS. GIRVIN: Okay. I thought I would try.

PETER WIDENER: So what we're going to be looking at tonight is just the five years.

MS. GIRVIN: Five years, yeah.

PETER WIDENER: Okay.

RICHARD PERRY: Since I have only been on board for five years and haven't been around long enough to know, we have never made an exception and granted a variance for longer than five years?

DAN MELVILLE: No, but we could.

KEITH O'TOOLE: We can, and, in fact, we have, but it is pretty rare.

RICHARD PERRY: I would think that based on the longevity of the business and the way that she keeps the business and such, that this might be one of those cases that we should consider it. Not permanent, but for say ten years.

DAN MELVILLE: I have been on this Board for 20 years and Mrs. Girvin has been here all of the times I have been here.

BEVERLY GRIEBEL: I have been on the Board ten years, and we have never done anything longer than the five years. The first time somebody comes in, if we approve it, it is for one year, subject to renewal then and if everything has been okay, then we go through a five-year on each one.

MS. GIRVIN: That is how I started.

DAN MELVILLE: I always wondered why we have it on some -- we can do that for discussion -- because some of them you don't even know they're there anyway, and if anybody had a complaint, you could haul them back in again.

BEVERLY GRIEBEL: Right. Just because we renew it for five years or one year or whatever, it doesn't mean that that person, that homeowner has free reign during that time, because if there is any infringement on any of the conditions that I just read you -- for example, on this one, if there is any problem with any of those, people can and do call the Building Department and then they check it out and sometimes people have to stop what they're doing at the home if they're not following the conditions. So just because it is written for a certain period of time, it doesn't mean that the person has blanket approval to do whatever they want in that time. You still have to follow the conditions.

BEVERLY GRIEBEL: Dan Kress, were there any problems? You didn't have any problems?

DANIEL KRESS: My office has received no complaints.

RICHARD PERRY: Probably hasn't in 40 years. Not that you have been around that long, Dan (Kress).

BEVERLY GRIEBEL: We need that for the record, so no reports, that is good.

DANIEL KRESS: No record of any complaints.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Richard Perry made a motion that the term granted for this conditional use permit be ten (10) years, and Michael Martin seconded the motion. All Board members were in favor of the motion.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a

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determination of no significant environmental impact, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

Beverly Griebel made a motion to approve the application with the following conditions, and Michael Martin seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Granted for a period of ten (10) years.
2. No on-premises advertising.
3. No on-street parking pertaining to the business.
4. Customers by appointment.
5. No more than three (3) customers at one time.
6. No outside employees.
7. Hours of operation as per application.
8. Applicant to maintain required State and local licenses.

The following finding of fact was cited:

1. Customary Home Occupation.
3. Application of Robert Hay, owner; 335 Fisher Road, Rochester, New York 14624 for variance to erect a 10' x 16' utility shed to be 6' from rear lot line (55' req. abutting a street) at property located at 335 Fisher Road in R-1-15 zone.

Cynthia Hay was present to represent the application.

BEVERLY GRIEBEL: This went to Monroe County Planning and they cut the decision off again.

DANIEL KRESS: We have had a talk with the people at Planning about that, but hopefully this will be the last month that that occurs, but I can tell you it is a local matter.

BEVERLY GRIEBEL: They cut them off -- they put them in the fax machine crazy.

DANIEL KRESS: We'll start moving it up 3 inches on the copier and hopefully that gives us a safe measure.

MS. HAY: Cynthia Hay, spouse of Robert Hay. We would like to put up a 10-by-16 shed. We live on a double corner lot. We have one house next-door to us.

BEVERLY GRIEBEL: Now, the shed that you already have there near the patio and the pool, that is coming down?

MS. HAY: That's correct.

BEVERLY GRIEBEL: And there is really no property to the rear of that. There is a street that is the next street -- I forget what street is behind your property.

MS. HAY: I don't even know it. I'm not sure. It doesn't have a sign.

BEVERLY GRIEBEL: Okay.

DAN MELVILLE: Just basically for storage?

MS. HAY: Just for storage, yes.

PETER WIDENER: I think you met the setback requirements of 14 feet. 36 feet from the fence?

MS. HAY: From the middle of the road.

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PETER WIDENER: Oh, the middle of the road.

BEVERLY GRIEBEL: You want it between a couple pine trees?

MS. HAY: It is actually in front of the pine trees so you won't even really see it.

BEVERLY GRIEBEL: You don't want to move it out further? You want to keep some area in your backyard?

MS. HAY: Right. Exactly. We want to keep as much space in the backyard as possible.

BEVERLY GRIEBEL: Rather than sticking the shed in the middle of the backyard?

MS. HAY: Right.

BEVERLY GRIEBEL: That would serve for the setback requirements, but you couldn't do anything around it?

MS. HAY: Exactly.

DENNIS SCHULMERICH: It indicates on the area variance application you will remove two pine trees. Will you not remove them and put the shed in front of it?

MS. HAY: No.

DENNIS SCHULMERICH: I'm looking at Number 5.

MS. HAY: Is the form you have dated 7/16/03?

DENNIS SCHULMERICH: No, 7/12.

MS. HAY: I gave them a new form on 7/16/03. No pine trees are being removed.

DENNIS SCHULMERICH: Still going in the corner from the pine trees?

MS. HAY: Right.

BEVERLY GRIEBEL: The sketch location is still the same?

MS. HAY: In the back corner of the lot, correct?

BEVERLY GRIEBEL: Yes.

MS. HAY: Okay.

RICHARD PERRY: The Conservation Board will be down to congratulate you in a couple minutes.

DENNIS SCHULMERICH: For leaving the trees.

MS. HAY: So will my son. That was a big point with him.

GERRY HENDRICKSON: I have no questions. I know what the yard is. I have been in that house many, many times.

MS. HAY: You have?

GERRY HENDRICKSON: Yes, previous owners.

MS. HAY: Oh, okay.

GERRY HENDRICKSON: My children and their children, they used to play baseball around that lot and football.

MS. HAY: There is a good backyard for that in there now.

BEVERLY GRIEBEL: You will probably want to keep it for some sports.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Beverly Griebel made a motion to approve the application with the following conditions, and Michael Martin seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following finding of fact was cited:

1. No impact on neighboring property.

Note: A building permit is required prior to construction of this shed.

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4. Application of CVS, owner; c/o Site Enhancement Services, 3699 W. Lathrop Street, South Bend, IN 46628 for variance to erect an 8'5" by 6'5" double-faced freestanding monument sign to be 9 1/2' high to replace existing monument sign previously approved at 6' high at property located at 2709 Chili Avenue in N.B. zone.

BEVERLY GRIEBEL: Number 4, application of CVS, was tabled. Is anyone is here for that CVS application? That is tabled until 9/23.

If anyone is here for the Conservation Board meeting, they're meeting in a little room over on the side. Anyone here for that?

(No response.)

DECISION: Unanimously tabled until 9/23/03 at 7:00 p.m. for the following reason:

1. Applicant failed to post the required sign.

Note: Applicant to obtain new signs at the Building Department to post and maintain as per Town regulations.

5. Application of Samuel Cammilleri, Jr., owner; 5 Haverhill Drive, Rochester, New York 14624 for variance to erect an addition to garage to be 53' from front lot line (60' req.) at property located at 5 Haverhill Drive in R-1-12 zone.

Samuel Cammilleri was present to represent the application.

MR. CAMMILLERI: I would like to bring my garage up and use the space that I have in the garage to put a first-floor laundry, mud room and powder room in the back of the existing garage and still have room for a two-car garage.

BEVERLY GRIEBEL: And the problem is trying to -- you can't push back.

MR. CAMMILLERI: I have nothing in my back.

BEVERLY GRIEBEL: It is kind of a sort of pie-shaped lot and you have a pool back there, too?

MR. CAMMILLERI: Everything I tried going back -- the Town took a drainage easement in the back there a while ago and I will end up on top of that drainage easement, too close to the lot line. Everything I try, I'm too close to the pool, too close to the side lot line.

BEVERLY GRIEBEL: The only way is to go out in front of a little bit?

MR. CAMMILLERI: Correct.

BEVERLY GRIEBEL: How do your neighbors feel about it?

MR. CAMMILLERI: They don't have a problem. One is with me now.

GERRY HENDRICKSON: How about the other side?

MR. CAMMILLERI: He doesn't have a problem. They don't have a problem.

GERRY HENDRICKSON: No problems whatsoever. I notice it -- I think it is the only house that will stick out a bit on that road.

MR. CAMMILLERI: It will have a different -- instead of the cape the way it is, it will look more like the colonial because my new roof will be this way (indicating).

DENNIS SCHULMERICH: I just want to clarify on the application that this is an area variance and not a use variance.

BEVERLY GRIEBEL: Right.

DENNIS SCHULMERICH: Impressive with how much you have done with your backyard.

MR. CAMMILLERI: There is nothing left.

DENNIS SCHULMERICH: I have no questions.

BEVERLY GRIEBEL: It is a fairly small lot in an R-1-12, so you don't have a lot of options. It is a funny shaped lot.

MR. CAMMILLERI: I know.

PETER WIDENER: Your setback from the road is 53 feet?

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MR. CAMMILLERI: It will be, yes.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

SUE RITZEL, 3 Haverhill

MS. RITZEL: I am the house before you get to Sam's (Cammilleri's), and I don't have any objection.

BEVERLY GRIEBEL: Okay. Thank you.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

Beverly Griebel made a motion to approve the application with the following conditions, and Michael Martin seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following finding of fact was cited:

1. Due to the lot configuration, backyard structures and side setback, there is no alternative to extending the garage into the front setback.

Note: A building permit is required prior to construction of this garage addition.

BEVERLY GRIEBEL: If anyone is looking for the Conservation Board meeting, it's in a little room across the hall.

BILL WILCOX

MR. WILCOX: They moved to the library.

BEVERLY GRIEBEL: Oh, they moved to the library. I'm sending them to an empty room.

DAN MELVILLE: Everybody is sitting in that little room.

BEVERLY GRIEBEL: I didn't know they had moved. Sorry about that.

MR. WILCOX: We just came from there.

6. Application of Kathleen Marmo, owner; 62 Pinewood Knoll, Rochester, New York 14624 for conditional use permit to allow a catering business in home at property located at 62 Pinewood Knoll in R-1-15 zone.

Kathleen Marmo was present to represent the application.

MS. MARMO: I'm Kathy Marmo. I live at 62 Pinewood Knoll and I'm applying for a conditional use permit to do a catering business, small catering business in part of my basement.

BEVERLY GRIEBEL: Okay. And this is something that you will not have customers calling at your house?

MS. MARMO: No.

BEVERLY GRIEBEL: You will make things and deliver them out?

MS. MARMO: Correct.

DAN MELVILLE: You will be preparing food, is that it, in the basement cooking food?

MS. MARMO: Yes.

DAN MELVILLE: I have a question for the side table. Will that require Fire Department approval on that?

DANIEL KRESS: Probably more importantly it will require approval of the Department of Health which tends to dictate where you need sinks, other such things.

DAN MELVILLE: Fire exits.

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DANIEL KRESS: What I generally advise people, when they have an agreement with DOH with the requirements with regard to the kitchen, then they need to come in for a building permit and I will consult with the Fire Marshall or whatever else is necessary regarding the egress issues.

MS. MARMO: I have been on the phone quite a bit with the Health Department and someone from the Fire Department and I guess their big concern was the exhaust and because it is not going to be commercial equipment, it is going to be residential equipment, that it won't require extra exhaust and because of the location, it is actually just down the stairs and there is an opening by the stairs, so they didn't seem to be that concerned about it, but I do have my certification and -- this is from Jim Creighton (phonetic), from the Department of Health. This is a permit to operate. This is an okay to go ahead with the construction, which is basically a three-bay sink, a hand-washing sink and my stove and refrigerator.

BEVERLY GRIEBEL: They have strict regulations.

MS. MARMO: I have been on the phone a lot with him because I want to make sure I'm doing all of the things right here. But they did mention that, and he said to go ahead with this and he will come in and check that out and then go from there.

DAN MELVILLE: Do you have a van or something you will be using to haul this stuff around?

MS. MARMO: There really isn't going to be any type of deep frying.

DAN MELVILLE: A van.

MS. MARMO: Oh, I thought you said a fan. Yes, I have a van.

DAN MELVILLE: Any lettering on it as far as --

MS. MARMO: No. Because I work full-time. And this is just a little something I'm starting on the side. I don't expect to. Maybe some day I will get bigger, but right now it is pretty small.

BEVERLY GRIEBEL: Starting out slow?

MS. MARMO: Very slow, yes.

RICHARD PERRY: Do we approve these without samples?

MS. MARMO: Certainly after my one-year I will bring something in.

DAN MELVILLE: We usually get cheese cake.

(Laughter.)

PETER WIDENER: You will be running the business out of the property?

MS. MARMO: Yes.

PETER WIDENER: Is there a d/b/a filed to that?

MS. MARMO: Yes. I have a d/b/a already.

PETER WIDENER: On your application you have three family cars, but you're going to be parking six to eight in the driveway.

BEVERLY GRIEBEL: It says how many can be parked.

MS. MARMO: I won't have any customers coming to my house. I didn't know how to answer that.

PETER WIDENER: Also your time, it says "available," and there are no hours put in.

MS. MARMO: Right. Because I will just -- as business comes in, and -- I will just work as I get jobs. I mean, I really don't know.

PETER WIDENER: I just want to be sure.

DAN MELVILLE: Unless you want to go in and check at the middle of the night and see if she is cooking.

DENNIS SCHULMERICH: Do we approve these without samples?

(Laughter.)

BEVERLY GRIEBEL: We usually do.

DENNIS SCHULMERICH: The application looks fine to me.

COMMENTS OR QUESTIONS FROM THE AUDIENCE: None.

Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Gerry Hendrickson seconded the motion. All Board members were in favor of the motion.

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Beverly Griebel made a motion to approve the application with the following conditions, and Michael Martin seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with the following conditions:

1. Granted for a period of one year.
2. No on-premises advertising.
3. No on-street parking pertaining to the business.
4. Hours of operation as per application.
5. No outside employees.
6. Applicant to obtain and maintain any required State and local licenses.

The following finding of fact was cited:

1. This is a customary home occupation.
7. Application of Anthony Cerretto, owner; 535 Westside Drive, Rochester, New York 14624 for Land Use Variance to operate a landscaping business from proposed detached garage at property located at 535 Westside Drive in R-1-20 zone.

Anthony Cerretto was present to represent the application.

DAN MELVILLE: Will you do both these?

BEVERLY GRIEBEL: I will read Number 8. It is the same applicant and address.

8. Application of Anthony Cerretto, owner; 535 Westside Drive, Rochester, New York 14624 for variance to allow the total square footage of garage area, including a new 30' x 50' detached garage to be 1,800 sq. ft. (900 sq. ft. allowed) at property located at 535 Westside Drive in R-1-20 zone.

BEVERLY GRIEBEL: This applicant was in last month and then he said he is doing business out of the garage, out of the property. That is why he needed the larger garage for various trucks and dump trucks. So he is in here now for the Land Use Variance to operate this landscaping business out of his garage.

KEITH O'TOOLE: If I may, are you Mr. Cerretto?

MR. CERRETTO: Yes.

KEITH O'TOOLE: The purpose for the garage is to put your equipment in there?

MR. CERRETTO: Yes.

KEITH O'TOOLE: Discussing them concurrently makes sense. I would suggest that you do that.

BEVERLY GRIEBEL: Obviously Number 8 is related to Number 7.

You're applying for a Land Use Variance, and what can you tell us?

MR. CERRETTO: Um, all I can say is that by doing this, it would, you know, it would improve my property a little bit. Even the surrounding neighborhood, it wouldn't do any harm to them. And --

DAN MELVILLE: What kind of equipment do you have?

MR. CERRETTO: I run a small landscape business. I have a dump truck, a trailer, a tractor.

DAN MELVILLE: How big of a dump truck?

MR. CERRETTO: Small six-wheel.

DENNIS SCHULMERICH: Currently on the property?

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MR. CERRETTO: Yes, it was. Yes.

RICHARD PERRY: What is the GVW?

MR. CERRETTO: I think it is like 25,000 pounds. It is over -- or -- yes, 25,000. It is over 18,000 pounds.

RICHARD PERRY: What kind of vehicle is it?

MR. CERRETTO: '69 Chevy dump truck.

RICHARD PERRY: C-60?

MR. CERRETTO: C-50. It is an older dump truck.

My property is pretty bad back there. There is an old barn there. I still think that, you know, the barn back there, it would definitely improve the area that is there.

BEVERLY GRIEBEL: Well, the reason why it is in is because this property is a residential property and you want to run a business on there. You have a dump truck. What else do you have?

MR. CERRETTO: I have pickup trucks.

DAN MELVILLE: How many?

MR. CERRETTO: I have two pickup trucks. I have a Chevy pickup truck and a Dodge Dakota.

DAN MELVILLE: Both for the business?

MR. CERRETTO: Both are for the business, yes.

RICHARD PERRY: How many trailers?

MR. CERRETTO: I have two trailers. I have a -- two trailers. I have one that tows the tractor and one that tows the hydroseeder.

RICHARD PERRY: What size is the tractor?

MR. CERRETTO: The trailer?

RICHARD PERRY: The tractor.

MR. CERRETTO: It's a farm tractor. It is an agricultural tractor. It is a mid-size.

RICHARD PERRY: How about lawn mowers?

MR. CERRETTO: No lawn mowers.

RICHARD PERRY: You don't do that?

DAN MELVILLE: Chemicals?

MR. CERRETTO: Grass seed, mulch and maybe some fertilizer. There is fertilizer as far as a chemical. There is fertilizer.

BEVERLY GRIEBEL: What is the hydroseeder? Is that another truck?

MR. CERRETTO: It is not other truck. It is a trailer. What it is is just a 300-gallon tank. It is a 300-gallon plastic tank that holds water and mixes the grass seed and mulch into one.

DAN MELVILLE: Then you spray it. It is the green stuff you see.

BEVERLY GRIEBEL: I wanted to know what kind of vehicle it was.

DENNIS SCHULMERICH: Where is it currently stored now?

MR. CERRETTO: On my property.

DENNIS SCHULMERICH: It is all there now?

MR. CERRETTO: Yes.

BEVERLY GRIEBEL: Do you do this alone or have other people working for you?

MR. CERRETTO: I do this alone and I have one guy that helps me do it. I usually have a helper for the most part.

DAN MELVILLE: Does he usually come to your property?

MR. CERRETTO: Yes. He comes to my house.

BEVERLY GRIEBEL: He parks his car at your place and then he drives one of the trucks?

MR. CERRETTO: Yes. Yes, he drives to my house, but no, he doesn't drive the vehicles. I'm hands-on. I drive. I do all of the driving of all of the vehicles. Maybe once in a great while if I were to take two vehicles, then he would drive.

BEVERLY GRIEBEL: So he leaves his car at your property and then he drives with you?

MR. CERRETTO: Yes.

BEVERLY GRIEBEL: So he is a hired employee that would be parking on the property. How long have you been doing this there?

MR. CERRETTO: It has only been about -- let's see. Last November.

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BEVERLY GRIEBEL: When did you move in?

MR. CERRETTO: We moved in the January before, I think -- the February before.

BEVERLY GRIEBEL: And where were you doing the business then?

MR. CERRETTO: I was in a place in Gates. I used to keep my equipment there, in Gates. Gates Baptist Temple, I used to keep my dump truck there and my trailer. I used to run it out of there.

PETER WIDENER: Your mulch, is it an open pile in the back where you store it?

MR. CERRETTO: The mulch is in bags. They're in little bags.

PETER WIDENER: When you were working out of the Gates Baptist Temple, are you affiliated with that? What was the d/b/a of your business?

MR. CERRETTO: The d/b/a of my business?

PETER WIDENER: Off that premise, the Gates Baptist?

DENNIS SCHULMERICH: Do you have a d/b/a?

MR. CERRETTO: Yes. I have a d/b/a. At least I did, years ago. I think it would still be there.

DAN MELVILLE: Is that filed at your old address?

MR. CERRETTO: Yes. It was probably my parents' address. I ran a telephone out of my parents' address and my equipment was somewhere else. My equipment was -- I used to leave it there and donate work to the church. I used to do grounds work and stuff like that.

PETER WIDENER: I understand. I have no other questions right now.

DENNIS SCHULMERICH: I have several questions. They may take a few minutes.

Use variances are not an insignificant change to Town property, and it is a significant change because it changes the zoning character of that property. You're asking for it to be converted from a residential property and you want to conditionally change to it a commercial property, and I personally, nor do I think the balance of the Board, take that lightly.

It is incumbent upon the applicant to prove four cases before a conditional use permit can be approved. The first is no reasonable return on investment. And no reasonable return on investment means that you bring in an appropriate business case before the Zoning Board and show a profit and loss statement that says you cannot survive in a residential environment unless you have profit-making conditions in that property being converted to commercial. I have taken a look at what you have submitted, and it is weak at best.

I see you showing no profit and loss not applicable. I see lack of information around why this should be converted from a residential property to the commercial property and why it is incumbent upon the property to be changed in terms of the zoning for you to be successful in business. Basically you're telling us this property has to go commercial or you will not stay in business. Let me finish. That's a justification for this to be converted to commercial.

I don't believe you have shown no reasonable return on investment as -- as a case for converting the property over.

There is also a condition you must show unique circumstances. I don't believe you have shown unique circumstances regarding this property. Unique circumstances based on what New York says is there must be at least proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation before a variance thereof can be allowed on the ground of unnecessary hardship. Unique requires that the hardship condition be not too generally applicable throughout the district as to require the conclusion that if all parcels similarly situated are granted variances, the zoning of the district would be materially changed from residential to commercial. What is involved, therefore, is a comparison between the entire district and the similarly situated land.

The second test of uniqueness is that the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. I don't see in any way, shape or form where your application shows that case.

The essential character of the locality is the third hardship that must be met. The essential character of locality speaks to the use be authorized by the variance that will not alter the essential character of the locality. We have had a case go to New York State Supreme Court that was appealed by the Zoning Board of Chili under a similar situation. Not a commercial business, but trying to put apartments in. New York State upheld the decision this Zoning Board made stating, "Upholding the decision of the Zoning Board of Appeals, the court held that the plaintiff's proposed use of the property

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for a 60-family multiple dwelling complex is incompatible with the overall plan and policy for development of the Town and would create conditions distinctly different from those existing in the locality by adding problems incident to an increase in population density as well as unquestionably altering the essential character of an otherwise residential neighborhood developed in reliance on the stability of the ordinance. I don't believe you have passed that test.

And finally, self-created hardship. The court has observed that nevertheless, the plaintiff purchased a lot and then applied for a variance. The opinion is such that if the person knowingly acquires the land for a prohibited use, they cannot thereafter have a variance on the ground of special hardship.

I don't believe you have met any of the four cases. I have no further questions.

BEVERLY GRIEBEL: Thank you, Denny (Schulmerich), good job.

What is the name of the your business?

MR. CERRETTO: Cerretto's Landscaping. Years ago I filed a d/b/a, and it should be still under that. I think I had gone through a bankruptcy and the only thing I never did was changed it. That is the only thing I might not have.

BEVERLY GRIEBEL: Why do you have so many vehicles when you're the only driver?

MR. CERRETTO: Throughout the years I purchased vehicles, and as I learned how to -- how to operate a business, a small business, in my learning, I bought things along the way.

BEVERLY GRIEBEL: But if you're the only driver, you can only drive one at a time. It doesn't make sense to me.

MR. CERRETTO: Um --

BEVERLY GRIEBEL: Do you have other employees?

MR. CERRETTO: No. That drive? No.

BEVERLY GRIEBEL: Yes.

MR. CERRETTO: No.

BEVERLY GRIEBEL: What do you do in this landscaping business?

MR. CERRETTO: I put lawns in. I put shrubs in. I put patios, retaining walls. Um, trees.

BEVERLY GRIEBEL: So you don't do grass cutting?

MR. CERRETTO: No maintenance. I do construction work.

BEVERLY GRIEBEL: Construction work for lawns?

MR. CERRETTO: Yes.

BEVERLY GRIEBEL: Do you have other work that you do?

MR. CERRETTO: No. That is it.

BEVERLY GRIEBEL: That is your only occupation?

MR. CERRETTO: That is my only occupation.

COMMENTS OR QUESTIONS FROM THE AUDIENCE:

LINDA KAVANAGH, 10 Chi-Mar Drive

MS. KAVANAGH: We're kind of behind him. All of us here are speaking against this. We're residential. We put our money in our -- and value into our homes. We do not think it is a wise move for the Town to start making Westside Drive a commercial corridor. I could go on with a lot of lists, but in the interest of time, I think it says it and think Mr. Cerretto has spoken that that is his sole purpose, is just so -- to make his garage and his business out of that home, and it is a home. Therefore, we're objecting to the garage, the business, and I feel if you turn down the business, the garage probably isn't a valuable asset to his property then because there is no need for it. Maybe those vehicles shouldn't be stored on that property because it is a residential home. I don't know what our zoning is for that. It doesn't seem to be an asset of our property.

DENNIS SCHULMERICH: They should not be.

MS. KAVANAGH: Then that is your job to address that.

RICHARD PERRY: That is why it is on this month. It was on last month just for the garage and when it became evident there was more than that involved, it was tabled until this move and -- until the

--

MS. KAVANAGH: Do we all need to speak?

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DENNIS SCHULMERICH: We would definitely like to hear you.

BEVERLY GRIEBEL: We can hear different people or they can just say their name and they agree or whatever.

MS. KAVANAGH: I can speak for my husband. One family enough? Do you need all six of us to stand up?

DENNIS SCHULMERICH: You are shaking your head?

MR. KAVANAGH: Yes. After 33 years, I know how to say yes.

MS. KAVANAGH: Good husband.

PAT SCHMITT, 8 Chi-Mar Drive

MS. SCHMITT: His property does back up directly to my backyard. I have lived there for 28 years. One of the original owners in that neighborhood when the homes were built. So we have put a lot of love and care into that neighborhood. It is a very residential neighborhood. I'm sure if you went out and looked, you know the area very well.

That property when it was sold, um, we were kind of optimistic there would be some improvement to that property in terms of the character of it. Nothing has taken place in terms of improvement on the property, and then when we found that, indeed, the money, obviously -- his concern with the property is obvious to me, to be an income source. So we're not seeing that he would improve or enhance in any way. What he said previously in his statement, that he could only improve it, that is not the case. If you come back and look at our backyards and take a look at that area, it would certainly take away from homes on Sesqui, homes on Chi-Mar and homes on Hallock, because it buffers all those.

BEVERLY GRIEBEL: You're right next to Battisti's?

MS. SCHMITT: Yes.

BEVERLY GRIEBEL: Very familiar with that area.

MS. SCHMITT: Yes.

DANIEL AND SANDRA MINCHEN, 4 Sesqui Drive

MR. MINCHEN: This is my wife Sandra. First of all, Mr. Cerretto, we're proud of business and entrepreneurs and small business people. What I am about to say is not intended to be against you in any way, but after looking hard at this proposal and discussing this and so on, we don't believe this is the wisest use of the land, but we do wish you the best in making a good landscaping business.

If I can detail some of my thoughts briefly, I would like to do so. The character of the neighborhood is very much residential. It is not like a beauty parlor. It is not like a catering business. We're talking about dump trucks here. We're talking about landscaping. We're talking about all of the implements of landscaping. If I let my mind go a little on that, I'm talking about chemicals, sprayers and I'm talking about herbicides. I'm talking about back loaders and backhoes and those kinds of things. And to me that equates to noise. I'm talking about a business. I'm talking about something that runs during business hours when some people sleep. I'm talking about the quietude of a residential neighborhood being pretty much ended by vehicles, large vehicles, not just small cars going down Westside Drive.

So I don't think that is compatible with where we have all put our money and our time and our effort and labor for many, many years.

I think also I would be concerned about a number of things. I would be concerned -- if a building like this is built -- it is larger than my house. It is hard for me to picture that any backyard -- my property is contiguous. It is right there. You look through some maple trees we put up and there you have it. We can see the barn in the wintertime very well from the second floor. It is just a straight view. I'm an 1800-square-foot house or garage -- we have not even talked about a roof here. We don't know what kind of roof, what kind of drainage, we don't know what kind of flooring. We don't know is there any sewage going into this, sewer lines I mean. When dump trucks come in, are they washed down? Are sprayers washed down and cleaned up? Where do you put the things you put in sprayers? I don't know what they're called, that green stuff you put on the lawn. But I'm a little concerned about herbicides and other lawn chemicals. Our drainage is not terribly good there. Our water table is 3 to 4 feet in the springtime. You put a shovel in the ground, push it hard and you have a fountain. Our sump pump is going constantly. So drainage off the roof, washing automobiles or whatever might be in the

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garage itself. It is a huge place, larger than mine. It's not what we're looking for.

I would also raise the issue that if that were the case -- which again, I don't know if it is in the plans, I would ask the Monroe County Health Department to see if that is okay in a residential. I tried to take a paint can down. They wanted me to come down to the Strong Memorial Hospital area Saturday at 9 because we have a paint can we want to get rid of. We have all these things, warnings. I don't know about the large storage of this. We're down land from Mr. Cerretto's land. We worry about, as I said, noise, trucks starting, idling, maintenance on trucks and the appearance to the residential area neighborhood. I know this sounds like I'm opposed to my neighbor. Not in any way. I want him to do well in life and I want him to be happy in life and succeed in his business, but I think wisdom is what we all need to look for.

There is a way we can be wiser with the use of the our land. It is the only land we have. I don't believe this is a proposal that is wise. I would urge him to take a second look at how he can operate his business consistent with his neighbor's wishes and with his best wishes and the best future use of the Town of Chili. Thank you.

CHARLES RETTIG, Coldwater Road

MR. RETTIG: I would like to address a couple of points that have already been addressed, but to emphasize, it is already being used as a business apparently, and that in itself is inappropriate.

We're talking about an R-1-12 area. And when I -- my thoughts just sitting here hearing the application was that there has been no input from the neighbors, but it has certainly been received now.

I might point out all of the neighbors in the surrounding areas might not be as aware of what is going on as the neighbors who are here tonight.

The other I think very important point this other gentleman just made is the fact that you don't only have fertilizers, you will have pesticides and there are laws, environmental laws for storage of such and you have to have a volume of such for such applications as this business, and that is not good for an R-1 area, if not in violation of the law.

The main point I would like to say is I'm definitely in support of the -- your Board member, Dennis Schulmerich, and his expounding the points of this case, which is not to be taken lightly for land use variance versus conditional use. I consider that very important, and therefore, certainly support what Dennis (Schulmerich) mentioned in the way of a Supreme Court case referenced, because that is important for what can happen if it is taken too lightly. Therefore, my comments are this is, in all honesty, against all reasonable present zoning laws. Thank you.

DOUG MILLER, 4 Chi-Mar Drive

MR. MILLER: I'd just like to again expound on what Mr. Schulmerich had discussed, that -- the four criteria that call for a business to be built in a residential area. None of those were met. And there again, I would just like to say the residents that we have, we want to keep it as a residential area, and certainly again, like Mr. Minchen said, we're not against business, but we do want to keep the neighborhood in the shape it is in.

BEVERLY GRIEBEL: I will just clarify again what Dennis (Schulmerich) said. With some of the applicants that come before this Board, they have to satisfy conditions, but with land use variances, the four conditions have to be satisfied, which makes it not lightly decided upon. To meet all four of these sometimes can be very tough.

HAROLD MC MANN, 14 Fenton Road

MR. McMANN: If he is running a business out of there now, are you set up with an RPZ backflow to fill your hydroseeder? Where are you getting your water to fill your hydroseeder? Do you have a commercial application for a pesticide license?

BEVERLY GRIEBEL: Please ask all questions here.

MR. McMANN: If he doesn't have any of these licenses or has an RPZ, he is in violation of Monroe County Water Authority -- the Municipal Water Authority. I mean I had a backflow preventing license for a good many years, and if he does not have that, with a visible gap of an inch and everything else, he can pollute our water system just by filling his -- through carelessness. So that is one point I want to make clear. Thank you very much.

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MS. SCHMITT: Could I ask a question?

BEVERLY GRIEBEL: Sure.

MS. SCHMITT: Obviously he is running the business now in violation of the Town codes. Whether or not this is approved or not, he has broken the law. Is there a recourse in terms of making him stop doing this immediately?

BEVERLY GRIEBEL: Well, I guess we'll refer to Mr. O'Toole. If this is approved, he could continue. If it is not approved tonight, then what would happen?

KEITH O'TOOLE: If it is not approved, he has a problem and should anyone wish to file a complaint against the applicant for continuing the business in violation of the zoning district regulations, they could go down to the Building Department and file such a complaint.

BEVERLY GRIEBEL: Now, if an application like this is denied by this Board, does the Building Department automatically check up on that? Within 30 days of the decision?

DANIEL KRESS: The Building Department would expect that arrangements would be made within a reasonable period of time to move the business elsewhere, so there would have to be some sort of follow-up, yes.

BEVERLY GRIEBEL: Does that kind of answer your question?

MS. SCHMITT: Let me clarify one thing. Someone would have to file a complaint?

BEVERLY GRIEBEL: Not necessarily. The Building Department -- if an application like this is denied, it is something that has been going on, what was said was that the applicant would have a reasonable length of time to move the business elsewhere.

MS. SCHMITT: So no one would have to personally file the complaint?

BEVERLY GRIEBEL: They could, or --

DENNIS SCHULMERICH: Or you might question the expediency of action taken based upon when the complaint was filed or not filed. If you let government take its course, it will do what it needs to do. If residents have complaints, the government needs to respond to that, as well.

BERNICE WILCOX, Stuart Road

MRS. WILCOX: I believe there are enough business locations in the Town where this business could be promoted without interrupting a residential neighborhood.

MR. CERRETTO: I don't have nothing else to say.

BEVERLY GRIEBEL: Do you use pesticides?

MR. CERRETTO: No, I don't. I don't have a pesticide license. I don't have the knowledge or the license to do that.

And the hydroseed tank was just a small one, just a small -- or I shouldn't -- I have nothing else to say.

BEVERLY GRIEBEL: 300 gallons is big.

MR. CERRETTO: Yes. I have nothing else to say.

BEVERLY GRIEBEL: That is not too small in my mind.

We mainly talked about Number 7, the Land Use Variance for the landscaping business, and Number 8 is for the enlarged garage which you need if the Land Use Variance is approved; is that correct?

MR. CERRETTO: Yes.

BEVERLY GRIEBEL: Okay. I think at last month's meeting you said that if you can't do business out of there, you won't need the garage; is that correct?

MR. CERRETTO: No. I wouldn't need the garage. I mean, I guess no, I wouldn't need the garage.

BEVERLY GRIEBEL: As was mentioned -- I think it was mentioned that this all came about because the question was asked as to what you were going to put in the garage, why you needed it, and if you saw earlier in the evening, we asked what are you going to put in the garage or the shed or whatever.

DAN MELVILLE: I guess I have another question before you close.

BEVERLY GRIEBEL: But that is how this came about, that you had the dump truck, and, you know, why do you have a dump truck? That is not something that every ordinary homeowner would have.

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DAN MELVILLE: As far as the garage goes, what is the estimated cost to build that?

MR. CERRETTO: To build the garage, I think it was like \$23,000.

DAN MELVILLE: You could probably almost rent some space for that kind of money and put a sign up and be able to advertise and everything else.

MR. CERRETTO: Yes, I guess.

BEVERLY GRIEBEL: And if the Land Use Variance is not approved, then that is what you would have to do.

MR. CERRETTO: Okay. There would be nothing in writing sent to me, nothing stating that?

DAN MELVILLE: You will know tonight.

MR. CERRETTO: Oh, okay.

BEVERLY GRIEBEL: There will be a decision that will come in a letter to you. I don't know if we'll have everything ready tonight. I'm not sure, but you --

DAN MELVILLE: There is a chance we might not vote tonight on this?

BEVERLY GRIEBEL: We'll probably vote, but I don't know if the findings would be ready. You did get a letter in the mail from the last meeting?

MR. CERRETTO: Yes.

BEVERLY GRIEBEL: So everything is followed up with a letter. Every applicant gets a letter as to what the decision is.

DENNIS SCHULMERICH: Question regarding the application on the garage. Is it reasonable then that if Item 7 for the Land Use Variance is denied, that we would remove the application for the garage, or would we just vote on it?

BEVERLY GRIEBEL: We have to vote on it.

MICHAEL MARTIN: Unless the applicant withdraws it.

DENNIS SCHULMERICH: Unless the applicant withdraw it.

BEVERLY GRIEBEL: He doesn't know what the decision is. Once we've closed out the public hearing, we won't be asking any more, but by his own admission he said that if he doesn't obtain the Land Use Variance requested in Number 7, he won't need the garage; is that correct, sir?

MR. CERRETTO: What was that?

BEVERLY GRIEBEL: If you do not get the approval for the Land Use Variance, Number 7, then you do not need the garage?

MR. CERRETTO: No, I will not.

BEVERLY GRIEBEL: So that is clear. That is part of the record.

This went before Monroe County Planning and came back as a local matter, both of the applications, 7 and 8.

On Applications 7 and 8, Beverly Griebel made a motion to declare the Board lead agency as far as SEQR, made a determination of no significant environmental impact, and Dennis Schulmerich seconded the motion. All Board members were in favor of the motion.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following findings of fact were cited:

1. Applicant failed to submit adequate financial data.
2. Applicant failed to list property for sale. The reason to list property for sale is to see if there can be a reasonable return on the property.
3. Applicant failed to establish a hardship.
4. Applicant's intended use would change the character of the neighborhood in the Westside Drive, Sesqui and Chi-Mar area.

DECISION: Unanimously approved by a vote of 7 yes with no conditions, and the following findings of fact were cited:

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1. The intended use would change the character of the neighborhood in the Westside Drive, Chi-Mar and Sesqui area.
2. Applicant only needed the garage for his business and he doesn't have zoning permits for the business.

The meeting ended at 9:35 p.m.